

AMENDED IN SENATE APRIL 13, 2005

**SENATE BILL**

**No. 852**

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**Introduced by Senator Bowen**  
**(Coauthor: Senator Alquist)**

February 22, 2005

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An act to ~~repeal and~~ amend Sections 1798.29 and 1798.82 of the Civil Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 852, as amended, Bowen. Identity theft.

Existing law requires any agency, or a person or business conducting business in California, which owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the data, as defined, to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. *Existing law allows that notification to be delayed if a law enforcement agency determines that the notification will impede a criminal investigation.*

This bill would require an agency, or a person or business conducting business in California, that ~~possesses~~ owns, licenses, or collects any data that includes the personal information of a California resident, to notify the resident of any breach of the security of the data, as specified. The bill would also ~~repeal duplicative provisions of law~~ prescribe that a request by a law enforcement agency to delay notification be in writing, as specified.

*By adding to the duties of local law enforcement agencies, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1798.29 of the Civil Code, as added by~~  
2     ~~Section 2 of Chapter 915 of the Statutes of 2002, is repealed.~~  
3     ~~SECTION 1. Section 1798.29 of the Civil Code, as added by~~  
4     ~~Section 2 of Chapter 1054 of the Statutes of 2002, is amended to~~  
5     ~~read:~~  
6     1798.29. (a) Any agency that owns—~~or~~, licenses  
7     ~~computerized~~, or collects data, whether or not in electronic or  
8     computerized form, that includes personal information shall  
9     disclose any breach of the security of the system following  
10    discovery—~~or notification~~ of the breach in the security of the data,  
11    or upon receipt of notice under subdivision (b), to any resident of  
12    California whose ~~unencrypted~~ personal information was, or is  
13    reasonably believed to have been, acquired by an unauthorized  
14    person. The disclosure shall be made in the most expedient time  
15    possible and without unreasonable delay, consistent with the  
16    legitimate needs of law enforcement, as provided in subdivision  
17    (c), or any measures necessary to determine the scope of the  
18    breach and restore the reasonable integrity of the data system.  
19    *The agency required to provide notification shall have the*  
20    *burden of demonstrating that all notifications were made as*  
21    *required by this section, including, but not limited to, evidence*  
22    *demonstrating the necessity of any delay.*  
23    (b) Any agency ~~that maintains computerized data in~~  
24    possession of data, whether or not held in electronic or  
25    computerized form, that includes personal information that the  
26    agency does not own shall notify the owner or licensee of the  
27    information of any breach of the security of the data immediately  
28    following discovery, if the personal information was, or is

1 reasonably believed to have been, acquired by an unauthorized  
2 person.

3 ~~(c) The notification required by this section may be delayed if~~  
4 *If a law enforcement agency determines that the notification will*  
5 *seriously impede a criminal investigation, the notification*  
6 *required by this section may be delayed upon the written request*  
7 *of the law enforcement agency.* The notification required by this  
8 section shall be made *without unreasonable delay* after the law  
9 enforcement agency determines that ~~it the notice~~ will not  
10 *seriously* compromise the investigation *and so notifies the*  
11 *agency in writing.*

12 (d) For purposes of this section, “breach of the security of the  
13 system” means unauthorized acquisition of ~~computerized~~ data  
14 that compromises the security, confidentiality, or integrity of  
15 personal information maintained by the agency. Good faith  
16 acquisition of personal information by an employee or agent of  
17 the agency for the purposes of the agency is not a breach of the  
18 security of the system, provided that the personal information is  
19 not used or subject to further unauthorized disclosure.

20 (e) For purposes of this section, “personal information” means  
21 an individual’s ~~first name or first initial and last name in~~  
22 combination with any one or more of the following data  
23 elements, ~~when either the name or the data elements are not~~  
24 ~~encrypted:~~

- 25 (1) Social security number.
- 26 (2) Driver’s license number or California ~~Identification Card~~  
27 *identification card* number.
- 28 (3) Account number, ~~or credit or debit card number, in~~  
29 ~~combination with any required; or, if a security code, access~~  
30 ~~code, or password that would permit is required for access to an~~  
31 individual’s financial account, *the account number or credit or*  
32 *debit card number in combination with the required code or*  
33 *password.*

34 (f) For purposes of this section, “personal information” does  
35 not include ~~publicly available information that is lawfully made~~  
36 ~~available to the general public from federal, state, or local~~  
37 ~~government records encrypted in both storage and transmission,~~  
38 *where the key or access to decrypting the information has not*  
39 *been accessed or acquired by any unauthorized person, and*  
40 *where the breach of the security of the system was not*

1 *perpetrated by, or with the assistance of, any employee, agent, or*  
2 *contractor of the agency. For purposes of this subdivision,*  
3 *“encrypted” means the use of an algorithmic process to*  
4 *transform data into a form in which there is a low probability of*  
5 *assigning meaning without use of a confidential process or key.*

6 (g) For purposes of this section, “notice” may be provided by  
7 one of the following methods:

8 (1) Written notice.

9 (2) Electronic notice, if the notice provided is consistent with  
10 the provisions regarding electronic records and signatures set  
11 forth in Section 7001 of Title 15 of the United States Code.

12 (3) Substitute notice, if the agency demonstrates that the cost  
13 of providing notice would exceed two hundred fifty thousand  
14 dollars (\$250,000), or that the affected class of subject persons to  
15 be notified exceeds 500,000, or the agency does not have  
16 sufficient contact information. Substitute notice shall consist of  
17 all of the following:

18 (A) E-mail notice when the agency has an e-mail address for  
19 the subject persons.

20 (B) Conspicuous posting of the notice on the agency’s Web  
21 site page, if the agency maintains one.

22 (C) Notification to major statewide media.

23 (h) Notwithstanding subdivision (g), an agency that maintains  
24 its own notification procedures as part of an information security  
25 policy for the treatment of personal information and is otherwise  
26 consistent with the timing requirements of this part shall be  
27 deemed to be in compliance with the notification requirements of  
28 this section if it notifies subject persons in accordance with its  
29 policies in the event of a breach of security of the system.

30 (i) *Regardless of the method by which notice is provided, that*  
31 *notice shall include all of the following:*

32 (1) *A description of the categories of information that were, or*  
33 *are reasonably believed to have been, acquired by an*  
34 *unauthorized person, including, but not limited to, specification*  
35 *of which of the elements of personal information were, or are*  
36 *reasonably believed to have been, so acquired.*

37 (2) *A toll-free telephone number the individual may use to*  
38 *contact the agency and from which the individual may learn what*  
39 *types of information the agency maintained about the individual*  
40 *or individuals in general.*

(j) A California resident may be determined to be an individual whose current postal mailing address, as reflected in the records of the agency, is in California.

(k) In the event that more than 5,000 California residents are to be notified at one time, the agency shall also notify, without delaying the notice to California residents for this reason, the three consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. Sec. 1681a, or their successors, of the timing, content, and distribution of the notices and approximate number of affected persons.

SEC. 2. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 1054 of the Statutes of 2002, is amended to read:

1798.82. (a) Any person or business that conducts business in California, and that owns or, licenses computerized, or collects data, whether or not in electronic or computerized form, that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data, or upon receipt of notice under subdivision (b), to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. *The person or business required to provide notification shall have the burden of demonstrating that all notifications were made as required by this section, including, but not limited to, evidence demonstrating the necessity of any delay.*

(b) Any person or business ~~that maintains computerized data in possession of data, whether or not held in electronic or computerized form,~~ that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

1     (c) ~~The notification required by this section may be delayed if~~  
2     *If a law enforcement agency determines that the notification will*  
3     *seriously impede a criminal investigation, the notification*  
4     *required by this section may be delayed upon the written request*  
5     *of the law enforcement agency.* The notification required by this  
6     section shall be made *without unreasonable delay* after the law  
7     enforcement agency determines that ~~it the notice~~ will not  
8     *seriously* compromise the investigation *and so notifies the person*  
9     *or business in writing.*

10    (d) For purposes of this section, “breach of the security of the  
11    system” means unauthorized acquisition of ~~computerized~~ data  
12    that compromises the security, confidentiality, or integrity of  
13    personal information maintained by the person or business. Good  
14    faith acquisition of personal information by an employee or agent  
15    of the person or business for the purposes of the person or  
16    business is not a breach of the security of the system, provided  
17    that the personal information is not used or subject to further  
18    unauthorized disclosure.

19    (e) For purposes of this section, “personal information” means  
20    an individual’s ~~first name or first initial and last name in~~  
21    combination with any one or more of the following data  
22    elements, ~~when either the name or the data elements are not~~  
23    ~~encrypted~~:

24       (1) Social security number.

25       (2) Driver’s license number or California ~~Identification Card~~  
26    ~~identification card~~ number.

27       (3) Account number; ~~or credit or debit card number, in~~  
28    ~~combination with any required; or, if a~~ security code, access  
29    code, or password ~~that would permit is required for~~ access to an  
30    individual’s financial account, *the account number or credit or*  
31    ~~debit card number in combination with the required code or~~  
32    ~~password.~~

33    (f) For purposes of this section, “personal information” does  
34    not include ~~publicly available~~ information that is ~~lawfully made~~  
35    ~~available to the general public from federal, state, or local~~  
36    ~~government records encrypted in both storage and transmission,~~  
37    ~~where the key or access to decrypting the information has not~~  
38    ~~been accessed or acquired by any unauthorized person, and~~  
39    ~~where the breach of the security of the system was not~~  
40    ~~perpetrated by, or with the assistance of, any employee, agent, or~~

1 *contractor of the person or business. For purposes of this*  
 2 *subdivision, “encrypted” means the use of an algorithmic*  
 3 *process to transform data into a form in which there is a low*  
 4 *probability of assigning meaning without use of a confidential*  
 5 *process or key.*

6 (g) For purposes of this section, “notice” may be provided by  
 7 one of the following methods:

8 (1) Written notice.

9 (2) Electronic notice, if the notice provided is consistent with  
 10 the provisions regarding electronic records and signatures set  
 11 forth in Section 7001 of Title 15 of the United States Code.

12 (3) Substitute notice, if the person or business demonstrates  
 13 that the cost of providing notice would exceed two hundred fifty  
 14 thousand dollars (\$250,000), or that the affected class of subject  
 15 persons to be notified exceeds 500,000, or the person or business  
 16 does not have sufficient contact information. Substitute notice  
 17 shall consist of all of the following:

18 (A) E-mail notice when the person or business has an e-mail  
 19 address for the subject persons.

20 (B) Conspicuous posting of the notice on the Web site page of  
 21 the person or business, if the person or business maintains one.

22 (C) Notification to major statewide media.

23 (h) Notwithstanding subdivision (g), a person or business that  
 24 maintains its own notification procedures as part of an  
 25 information security policy for the treatment of personal  
 26 information and is otherwise consistent with the timing  
 27 requirements of this part, shall be deemed to be in compliance  
 28 with the notification requirements of this section if the person or  
 29 business notifies subject persons in accordance with its policies  
 30 in the event of a breach of security of the system.

31 (i) *Regardless of the method by which notice is provided, that*  
 32 *notice shall include all of the following:*

33 (1) *A description of the categories of information that were, or*  
 34 *are reasonably believed to have been, acquired by an*  
 35 *unauthorized person, including, but not limited to, specification*  
 36 *of which of the elements of personal information were, or are*  
 37 *reasonably believed to have been, so acquired.*

38 (2) *A toll-free telephone number the individual may use to*  
 39 *contact the person or business and from which the individual*

1 may learn what types of information the person or business  
2 maintained about the individual or individuals in general.

3 (j) A California resident may be determined to be an  
4 individual whose current postal mailing address, as reflected in  
5 the records of the person or business, is in California.

6 (k) In the event that more than 5,000 California residents are  
7 to be notified at one time, the person or business shall also  
8 notify, without delaying the notice to California residents for this  
9 reason, the three consumer reporting agencies that compile and  
10 maintain files on consumers on a nationwide basis, as defined by  
11 15 U.S.C. Sec. 1681a, or their successors, of the timing, content,  
12 and distribution of the notices and approximate number of  
13 affected persons.

14 SEC. 3. If the Commission on State Mandates determines that  
15 this act contains costs mandated by the state, reimbursement to  
16 local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.

19 ~~SEC. 2. Section 1798.29 of the Civil Code, as added by~~  
20 ~~Section 2 of Chapter 1054 of the Statutes of 2002, is amended to~~  
21 ~~read:~~

22 ~~1798.29. (a) Except as provided in subdivision (e), any~~  
23 ~~agency that owns or licenses data that includes personal~~  
24 ~~information concerning a California resident shall notify the~~  
25 ~~resident that there has been a breach of the security of that data~~  
26 ~~following discovery or notification of the breach. The~~  
27 ~~notification shall be made in the most expedient time possible~~  
28 ~~and without unreasonable delay, consistent with the legitimate~~  
29 ~~needs of law enforcement, as provided in subdivision (e), or with~~  
30 ~~any measures necessary to determine the scope of the breach and~~  
31 ~~restore the reasonable security and confidentiality of the data.~~

32 ~~(b) Any agency that maintains data that includes personal~~  
33 ~~information concerning a California resident and that the agency~~  
34 ~~does not own shall notify the owner or licensee of the~~  
35 ~~information of any breach of the security of the data immediately~~  
36 ~~following discovery, if the personal information was, or is~~  
37 ~~reasonably believed to have been, acquired by an unauthorized~~  
38 ~~person.~~

39 ~~(c) (1) The notification required by this section may be~~  
40 ~~delayed if a law enforcement agency determines that the~~



1 notification will impede a criminal investigation. The notification  
2 required by this section shall be made after the law enforcement  
3 agency determines that it will not compromise the investigation.

4 (2) ~~The notification under this section is not required if, as a~~  
5 ~~result of the investigation described in paragraph (1), the law~~  
6 ~~enforcement agency concludes that personal information was not~~  
7 ~~acquired by an unauthorized person.~~

8 (d) ~~For purposes of this section, “breach of the security of the~~  
9 ~~data” means unauthorized acquisition of data that compromises~~  
10 ~~the security and confidentiality of personal information~~  
11 ~~maintained by the agency. Good faith acquisition of personal~~  
12 ~~information by an employee or agent of the agency for a purpose~~  
13 ~~of the agency is not a breach of the security of the data, provided~~  
14 ~~that the personal information is not used for a purpose unrelated~~  
15 ~~to the agency or subject to further unauthorized disclosure.~~

16 (e) ~~For purposes of this section, “personal information” means~~  
17 ~~an individual’s first name or first initial and last name in~~  
18 ~~combination with any one or more of the following data~~  
19 ~~elements, when the data elements are not encrypted or redacted:~~

20 (1) ~~Social security number.~~

21 (2) ~~Driver’s license number or California Identification Card~~  
22 ~~number.~~

23 (3) ~~Account number or credit or debit card number, in~~  
24 ~~combination with any required security code, access code, or~~  
25 ~~password that would permit access to an individual’s financial~~  
26 ~~account.~~

27 (f) ~~For purposes of this section, “personal information” does~~  
28 ~~not include publicly available information that is lawfully made~~  
29 ~~available to the general public from federal, state, or local~~  
30 ~~government records.~~

31 (g) ~~For purposes of this section, “notice” may be provided by~~  
32 ~~one of the following methods:~~

33 (1) ~~Written notice.~~

34 (2) ~~Electronic notice, if the notice provided is consistent with~~  
35 ~~the provisions regarding electronic records and signatures set~~  
36 ~~forth in Section 7001 of Title 15 of the United States Code.~~

37 (3) ~~Substitute notice, if the agency demonstrates that the cost~~  
38 ~~of providing notice would exceed two hundred fifty thousand~~  
39 ~~dollars (\$250,000), or that the affected class of subject persons to~~  
40 ~~be notified exceeds 500,000, or the agency does not have~~

~~sufficient contact information. Substitute notice shall consist of all of the following:~~

~~(A) E-mail notice when the agency has an e-mail address for the subject persons.~~

~~(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.~~

~~(C) Notification to major statewide media.~~

~~(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section shall be deemed to be in compliance with the notification requirements of this section if the agency notifies the subject persons in accordance with its policies in the event of a breach of security of the data.~~

~~SEC. 3. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 915 of the Statutes of 2002, is repealed.~~

~~SEC. 4. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 1054 of the Statutes of 2002, is amended to read:~~

~~1798.82. (a) Except as provided in subdivision (c), any person or business that conducts business in California, and that owns or licenses data that includes personal information concerning a California resident, shall notify that resident that there has been a breach of the security of that data following discovery or notification of the breach. The notification shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable security and confidentiality of the data.~~

~~(b) Any person or business that maintains data that includes personal information concerning a California resident and that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.~~

~~(c) (1) The notification required by this section may be delayed if a law enforcement agency determines that the~~

1 notification will impede a criminal investigation. The notification  
2 required by this section shall be made after the law enforcement  
3 agency determines that it will not compromise the investigation.

4 (2) The notification under this section is not required if, as a  
5 result of the investigation described in paragraph (1), the law  
6 enforcement agency concludes that personal information was not  
7 acquired by an unauthorized person.

8 (d) For purposes of this section, “breach of the security of the  
9 data” means unauthorized acquisition of data that compromises  
10 the security and confidentiality of personal information  
11 maintained by the person or business. Good faith acquisition of  
12 personal information by an employee or agent of the person or  
13 business for a purpose of the person or business is not a breach of  
14 the security of the data, provided that the personal information is  
15 not used for a purpose unrelated to the person or business or  
16 subject to further unauthorized disclosure.

17 (e) For purposes of this section, “personal information” means  
18 an individual’s first name or first initial and last name in  
19 combination with any one or more of the following data  
20 elements, when the data elements are not encrypted or redacted:

21 (1) Social security number.

22 (2) Driver’s license number or California Identification Card  
23 number.

24 (3) Account number or credit or debit card number, in  
25 combination with any required security code, access code, or  
26 password that would permit access to an individual’s financial  
27 account.

28 (f) For purposes of this section, “personal information” does  
29 not include publicly available information that is lawfully made  
30 available to the general public from federal, state, or local  
31 government records.

32 (g) For purposes of this section, “notice” may be provided by  
33 one of the following methods:

34 (1) Written notice.

35 (2) Electronic notice, if the notice provided is consistent with  
36 the provisions regarding electronic records and signatures set  
37 forth in Section 7001 of Title 15 of the United States Code.

38 (3) Substitute notice, if the person or business demonstrates  
39 that the cost of providing notice would exceed two hundred fifty  
40 thousand dollars (\$250,000), or that the affected class of subject

1 ~~persons to be notified exceeds 500,000, or the person or business~~  
2 ~~does not have sufficient contact information. Substitute notice~~  
3 ~~shall consist of all of the following:~~  
4 ~~(A) E-mail notice when the person or business has an e-mail~~  
5 ~~address for the subject persons.~~  
6 ~~(B) Conspicuous posting of the notice on the Web site page of~~  
7 ~~the person or business, if the person or business maintains one.~~  
8 ~~(C) Notification to major statewide media.~~  
9 ~~(h) Notwithstanding subdivision (g), a person or business that~~  
10 ~~maintains its own notification procedures as part of an~~  
11 ~~information security policy for the treatment of personal~~  
12 ~~information and is otherwise consistent with the timing~~  
13 ~~requirements of this section shall be deemed to be in compliance~~  
14 ~~with the notification requirements of this section if the person or~~  
15 ~~business notifies the subject persons in accordance with its~~  
16 ~~policies in the event of a breach of security of the data.~~